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PATENT
Attorney Docket 1190

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
WANG et al.)
Serial No.: 10/026,043) Art Unit: TBD RECEIVED
Filed: TBD) Examiner: TBD APR 18 2002
For: SYSTEM AND METHOD FOR UPPER LAYER ROAMING OFFICE OF PETITIONS
AUTHENTICATION

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

PETITION FOR SUSPENSION OF THE RULES UNDER 37 C.F.R. § 1.183

This is a petition under 37 C.F.R. § 1.183 for suspension of the requirement of 37 C.F.R. § 1.10(c)(3) that a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit be provided to establish a filing date of October 25, 2001 for the above-referenced U.S. patent application (the "'043 application").

Adjustment date: 05/13/2002 AKELLEY
04/18/2002 GTEFFERA 00000106 195407 10026043
01 FC:122 130.00 CR

FACTS

1. The '043 application was drafted and filed by Oleg F. Kaplun, Esq., applicants' outside patent counsel. (See accompanying Declaration of Oleg F. Kaplun, Esq. in Support of Petition filed herewith ("Kaplun Declaration"), ¶¶ 1, 3).

2. A certification of mailing under 37 C.F.R. § 1.10 signed by Mr. Kaplun was included on the first page of the application. The certification states that the '043

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application was deposited via USPS Express Mail on October 25, 2001, using Express Mail No. EL869561355US. (See accompanying Declaration of Mark I. Koffsky, Esq. in Support of Petition filed herewith ("Koffsky Declaration"), Exhibit A.).

4. On February 28, 2002, the PTO mailed a filing receipt for the '043 application listing the '043 application as having a filing date of December 25, 2001. (Koffsky Declaration, Exhibit B).

5. On or about March 15, 2002, Mr. Kaplun mailed a request for a corrected filing receipt to the PTO requesting that the '043 application be accorded a filing date of October 25, 2001. (Koffsky Declaration, Exhibit C).

6. On March 25, 2002, the PTO mailed a response to request for corrected filing receipt rejecting the request for a corrected filing receipt because no copy of the Express Mail label was enclosed. (Koffsky Declaration, Exhibit D).

7. After a diligent search, applicants' attorneys have been unable to locate the Express Mail label used for the '043 application. (Koffsky Declaration, ¶ 2; Kaplun Declaration, ¶ 3).

ARGUMENT IN SUPPORT OF PETITION

Applicant requests that the requirements of 37 C.F.R. § 1.10(c)(3) be waived in this case because there is clear and convincing evidence that the mailing of the '043 application satisfying the requirements of 37 C.F.R. § 1.10(a) did, in fact, occur on October 25, 2001. Such evidence includes the following:

1. It is Mr. Kaplun's standard practice for applications from Symbol Technologies, Inc., the assignee of the '043 application, to obtain the earliest filing date possible by following the requirements of 37 C.F.R. § 1.10. (Kaplun Declaration, ¶ 1).

2. A certification of mailing under 37 C.F.R. § 1.10 signed by Mr. Kaplun was included on the first page of the '043 application stating that the '043 application was being deposited via USPS Express Mail on October 25, 2001 using Express Mail No. EL869561355 US. (Koffsky Declaration, Exhibit A). The records of the USPS obtained via the USPS website indicate that a package bearing the same Express Mail Number was accepted by the USPS on October 25, 2001 in New York, New York. (Koffsky Declaration, Exhibit E). This is the same city where Mr. Kaplun normally mails Symbol patent applications. (Kaplun Declaration, ¶ 2). The fact that no further information about the mailing is available from the USPS is not unusual in light of the disruption of the mails that occurred in late 2001 as a result of the discovery of anthrax in USPS facilities. (Koffsky Declaration, Exhibit F).

3. The PTO assigned the filing date for the '043 application as December 25, 2001, a Federal holiday. (Koffsky Declaration, Exhibit B). Under 37 C.F.R. § 1.6(a)(1), absent a proper certificate of mailing under 37 C.F.R. § 1.10, the filing date for an application is the date of receipt in the PTO. The filing date granted the '043 application is inconsistent with this regulation since the PTO does not receive mail on Federal holidays.

CONCLUSION

For the reasons stated above, it is respectfully requested that the '043 application be granted a filing date of October 25, 2001.

Pursuant to 37 C.F.R. § 1.17(h), please charge the \$130.00 fee for this petition to Deposit Account No. 19-5407.

Should further information be needed in support of this petition, please call the undersigned at (631) 738-5586.

Respectfully submitted,

By: 

Mark I. Koffsky, Esq.
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Symbol Technologies, Inc.
One Symbol Plaza, A-6
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Dated: April 12, 2002

"EXPRESS MAIL" Mailing Label Number EU132022858US

Date of Deposit April 12, 2002
I hereby certify under 37 CFR 1.10 that this correspondence is being deposited with the United States Postal Service as "Express Mail Post Office to Addressee" with sufficient postage on the date indicated above, as is addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Judith L. Ahrens
JUDITH L. AHRENS